

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1451

Introduced by Senator Figueroa

February 19, 2004

An act to add Title 1.81.4 (commencing with Section 1798.98) to Part 4 of Division 3 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1451, as amended, Figueroa. ~~Financial and medical privacy~~
Privacy guarantees: contracts.

Existing law ~~generally provides for the confidentiality of medical information, but authorizes a provider of health or a health care service plan to disclose medical information to any person or entity that provides billing, claims management, medical data processing, or other administrative services for specified entities.~~ Existing law also requires a business to ensure the privacy of a customer's *records and* personal information, as defined. *Existing law also prohibits a person or entity from publicly posting or displaying an individual's social security number. Existing federal law, the Gramm-Leach-Bliley Act, requires financial institutions to provide a notice to consumers relative to the use by the financial institution of nonpublic personal information, and in that regard authorizes consumers to direct that the information not be shared with nonaffiliated 3rd parties. The California Financial Information Privacy Act, requires a financial institution, as defined, to provide a specified written form to a consumer relative to the sharing of the consumer's nonpublic personal information and authorizes a consumer to direct that the information not be shared with certain entities.*

This bill would ~~express the intent of the Legislature to enact legislation that addresses the growing threat to privacy by individuals or corporations that contract or subcontract with individuals~~ require a person or entity that conducts business in California and shares the personal and confidential information of its customers with specified parties that are physically located outside of California or the United States ~~that handle or come into contact with private medical and financial information~~ and that are not part of, or affiliated with, the person or entity pursuant to the federal Gramm-Leach-Bliley Act to include specified provisions in its contracts and subcontracts guaranteeing, among other things, the right to informational privacy under existing law. The bill would also require these persons and entities to clearly disclose to all California customers, prior to sharing the customer's information, that the customer's personal or confidential information will be entrusted to those parties located outside of California or the United States.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to enact~~
2 *SECTION 1. Title 1.81.4 (commencing with Section 1798.98)*
3 *is added to Part 4 of Division 3 of the Civil Code, to read:*

4
5 *TITLE 1.81.4. PRIVACY GUARANTEES*
6

7 *1798.98. (a) Every person or entity that conducts business in*
8 *California and shares the personal or confidential information of*
9 *any customer with any person, office, contractor, subcontractor, or*
10 *other entity that is not part of, or affiliated with, the person or*
11 *entity or its corporate structure as provided in the federal*
12 *Gramm-Leach-Bliley Act (Public Law 106-102), and is physically*
13 *located outside California, or outside of the United States of*
14 *America, shall include clear provisions in its contracts and*
15 *subcontracts guaranteeing the following:*

16 *(1) That every person, office, contractor, subcontractor, or*
17 *other entity, as well as every employee or independent contractor*
18 *or other person who has access to the personal or confidential*
19 *information of California customers shall treat that information*

1 *with the utmost care and respect for its personal or confidential*
2 *nature, shall not disclose that information, and shall use the*
3 *personal or confidential information solely for the performance of*
4 *any duties or obligations set out in the contract.*

5 *(2) That the provisions of federal and California laws*
6 *protecting an individual's right to informational privacy shall be*
7 *applicable to the personal and confidential information of*
8 *California customers, irrespective of where any violation of those*
9 *protections may occur, including, but not limited to, all of the*
10 *following:*

11 *(A) Section 1 of Article I of the California Constitution.*

12 *(B) Part 2.6 (commencing with Section 56) of Division 1.*

13 *(C) Title 1.81 (commencing with Section 1798.80), Title 1.81.1*
14 *(commencing with Section 1798.85), Title 1.81.3 (commencing*
15 *with Section 1798.92), Title 1.82 (commencing with Section 1799).*

16 *(D) Division 1.2 (commencing with Section 4050) of the*
17 *Financial Code.*

18 *(E) Any regulations implementing any statutory or other*
19 *provision protecting the informational privacy of California*
20 *citizens.*

21 *(3) That any person or entity of whatever kind with access to the*
22 *personal or confidential information about a California customer*
23 *shall consent to jurisdiction in the courts of California for any*
24 *violation of federal or California law protecting informational*
25 *privacy with respect to California customers.*

26 *(4) That every contract and subcontract of whatever kind shall*
27 *specify that any party to the contract or transaction whose actions*
28 *are a proximate cause of the violation of any California citizen's*
29 *privacy or confidentiality shall be liable for their conduct in*
30 *California's courts.*

31 *(5) That the primary contractor shall be strictly liable for any*
32 *action of its contractors or subcontractors, subsidiaries, affiliates,*
33 *employees or independent contractors that violate the*
34 *confidentiality provisions of federal or California law.*

35 *(b) Every person or entity that conducts business in California*
36 *and shares the personal or confidential information of any of its*
37 *customers with any person, office, contractor, subcontractor, or*
38 *other entity that is physically located outside California, or outside*
39 *of the United States of America, shall clearly disclose to all*
40 *California customers prior to sharing that customer's information*

1 *that the customer's personal or confidential information will be*
2 *entrusted to persons outside of California or outside of the United*
3 *States of America. The disclosure may make reference to the*
4 *protections set out in subdivision (a).*
5 ~~legislation that addresses the growing threat to privacy by~~
6 ~~individuals or corporations that contract or subcontract with~~
7 ~~individuals located outside of the United States that handle or~~
8 ~~come into contact with private medical and financial information.~~
9

